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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALBERT ZUNIGA,

Defendant.

NO. CR-08-2097-LRS

**ORDER DECLARING MISTRIAL AND
SETTING NEW TRIAL DATE AND
PRETRIAL CONFERENCE DATE**

This matter came on for jury trial on March 16, 2009, and concluded on March 20, 2009 when the Court declared a mistrial on **Count 1** of the **Indictment** (Ct. Rec. 20). The jury found Defendant not guilty of Count 2 of the Indictment. The government was represented by Assistant United States Attorney Thomas Hanlon. The Defendant, Albert Zuniga, was present and represented by Amanda Stevens. This Order is entered to memorialize the oral rulings of the Court.

On March 19, 2009, the jury in the above-captioned case sent a note to the Court, indicating that they were unable to reach a unanimous verdict. Following receipt of the note, the Court examined the jury, in the presence of counsel, and the defendant. The Court concluded that the jury was not hopelessly deadlocked and that further deliberation would assist in reaching a unanimous verdict.

1 On March 20, 2009, after further deliberation, the jury sent a
2 note to the Court, indicating that they had reached a verdict on one
3 count and were deadlocked on the other count. Following receipt of
4 the note (Ct. Rec. 116), the Court examined the jury, in the presence
5 of counsel, and the defendant. After hearing from counsel, who
6 jointly concurred that a mistrial should be declared, the Court
7 concluded that the jury was hopelessly deadlocked and that further
8 deliberation would not assist in reaching a unanimous verdict on the
9 remaining count.

10 Accordingly, the Court declared a mistrial on the remaining
11 count, Count 1, and discharged the jury on March 20, 2009.

12 **IT IS HEREBY ORDERED:**

13 1. The Court declares a **MISTRIAL** on Count 1 of the Indictment
14 (Ct. Rec. 20).

15 2. Defendant's new speedy trial interval on Count 1 of the
16 Indictment shall begin with the entry of this Order memorializing the
17 oral ruling of the Court. See 18 U.S.C. § 3161(e) (stating trial to
18 "commence within seventy days from the date the action occasioning the
19 retrial becomes final"); *United States v. Crooks*, 804 F.2d 1441 (9th
20 Cir. 1986) (holding under 18 U.S.C. § 3161(e) that "district court's
21 order, not the dismissal of the jury, constituted the action
22 occasioning the new trial").

23 3. Defendant's **NEW TRIAL** on Count 1 of the Indictment is set for
24 **May 4, 2009 at 9:00 a.m. in Yakima, Washington. Counsel shall meet**
25 **with the Court in Chambers at 8:30 a.m. on the day of trial. Any**
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1 motions will be addressed at a pretrial conference in open court at
2 8:30 a.m.

3 5. The Court **RESERVES** ruling on Defendant's Motion to Renew For
4 Judgment fo Acquittal Pursuant to Federal Rule of Criminal Procedure
5 29, Ct. Rec. 121, filed on March 24, 2009. The Court will decide the
6 motion after briefing is received from the government. Such briefing
7 shall be filed by the government on or before **April 6, 2009**.

8 6. A status conference is scheduled for **April 9, 2009 at 9:00**
9 **a.m. in Yakima** to discuss pretrial dates and possible scheduling
10 conflicts on the Court's calendar.

11 **IT IS SO ORDERED.** The District Court Executive is directed to
12 enter this order and to provide copies to all counsel, the U.S.
13 Marshal Service, and the Jury Administrator.

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15 **DATED** this 26th day of March, 2009.

16
17 *S/ Lonny R. Suko*

18 LONNY R. SUKO

19 United States District Judge
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